

UNITED STATES COURT FOR THE
DISTRICT OF MARYLAND

In re Mutual Funds Investment Litigation

04-md-15861
(Hon. Catherine C. Blake)

**MOTION OF THE SIDNEY HILLMAN HEALTH CENTER
OF ROCHESTER (NY) FOR ESTABLISHMENT OF A CHARLES SCHWAB
CORP. (EXCELSIOR FUND) PARENT INVESTOR SUB-SUBTRACK,
CONSOLIDATION OF ACTIONS, AND APPOINTMENT OF
LEAD PLAINTIFF AND LEAD COUNSEL FOR CHARLES SCHWAB CORP.
PARENT INVESTOR SUB-SUBTRACK**

PLEASE TAKE NOTICE THAT Charles Schwab Corp. investor The Sidney Hillman Health Center of Rochester (NY) (“Hillman Health Center”) hereby does and shall move this Court before the Honorable Catherine C. Blake for an order: (1) establishing a sub-subtrack in the above-referenced proceeding for a class of Charles Schwab Corp. (“Excelsior Parent”) investors; (2) consolidating the related Excelsior Parent investor class actions; (3) pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”) appointing Hillman Health Center as lead plaintiff for the proposed Excelsior Parent investor class sub-subtrack; and (4) approving its selection of the law firm of Kirby McInerney & Squire, LLP as lead counsel for said proposed class.

This motion is made on the grounds that Federal Rules Civil Procedure 23 and notice of due process require that the Excelsior Parent investor sub-subtrack class receive adequate representation from a similarly-situated investor, and Hillman Health

Center has previously filed the only timely motion pursuant to the PSLRA for appointment as lead plaintiff for this sub-subtrack class.

Dated: New York, New York
August 13, 2004

Respectfully submitted,

KIRBY McINERNEY & SQUIRE, LLP

By:  _____

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Attorneys for Movant The Sidney Hillman Health
Center of Rochester (NY) (proposed lead plaintiff
for Excelsior Parent (Schwab) class sub-subtrack)